

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PAULA A. KRAFT, <sup>1</sup>	§	
	§	No. 204, 2011
Petitioner Below,	§	
Appellant,	§	Court Below: Family Court of
	§	the State of Delaware, in and for
v.	§	New Castle County
	§	
MATTHEW G. KRAFT,	§	File No. CN10-04285
	§	Petition No. 10-26573
Respondent Below,	§	
Appellee.	§	

Submitted: September 21, 2011

Decided: October 4, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

**ORDER**

This 4<sup>th</sup> day of October 2011, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Paula A. Kraft (“Mother”), the petitioner-below, appeals from a Family Court order denying her request to modify a visitation arrangement with Matthew G. Kraft (“Father”), the respondent-below, regarding the parties’ son, Jeremy Kraft (“Jeremy”). On appeal, Wife claims that the trial court erroneously applied the statutory eight-factor test to determine the “best interests of the child,” and failed to give appropriate weight to the testimony of one expert witness. Because we find

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<sup>1</sup>The Court, *sua sponte*, has assigned pseudonyms to all parties under Supr. Ct. R. 7(d).

sufficient evidence of record to support the trial court's "best interests of the child" analysis, and because the court afforded adequate weight to the expert's testimony, the trial court's decision is affirmed.

2. Father and Mother met in 1999, married, and then adopted a newborn son, Jeremy, in 2006. Father is a recovered alcohol and drug addict. In 2010, the parties separated after Mother confronted Father, and Father admitted to patronizing prostitutes from 2005 to 2009. Despite an attempt at reconciliation, the parties divorced in 2011.

3. Mother petitioned for custody in July 2010. In August 2010, Mother filed an emergency *ex parte* motion requesting that Father's visitation with Jeremy be supervised. Mother alleged that Father's "sex addiction"<sup>2</sup> and his association with registered sex offenders, whom he met in counseling for that condition, posed a risk of harm to Jeremy. The court denied her request, and Mother subsequently petitioned for an emergency *ex parte* Order of Protection from Abuse against Father, claiming Father had entered the marital residence after Mother asked him not to return. The parties later agreed to a consent order, and the Family Court ordered an interim visitation schedule with Father (who had a temporary work

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<sup>2</sup> Whether Father is in fact a sex addict was contested before the Family Court. The trial court did not make a conclusive finding, stating instead that the "Court finds that whether Father is or is not suffering from a sex addiction is irrelevant as Mother failed to present evidence that Child has been harm[ed] or is in danger due to Father's alleged addiction." Order at 11.

assignment in New Jersey), while Mother's original petition for custody was pending. Soon thereafter, Mother moved for priority scheduling and a preliminary injunction prohibiting Father from removing Jeremy from Delaware. The trial court granted the latter motion.

4. In November 2010, Mother again moved *ex parte* for priority scheduling, and requested Father's overnight visitation be terminated and his visits with Jeremy be supervised, on the basis that Father's sex addiction constituted a threat to Jeremy's safety. Mother alleged, among other things, that Father had acknowledged he was a "sex addict" and that he had taken Jeremy on outings with members of his sex addiction support group, thereby exposing Jeremy to "potential assault by pedophiles." Father denied those allegations. The Family Court denied Mother's request for priority scheduling. The parties also agreed, upon Mother's motion, to have Dr. Harris Finkelstein prepare psychological reports of both parents before the custody hearing.

5. On March 7, 2011, the trial court held a full hearing to adjudicate the original petition for custody. During the hearing, counsel for Mother asked the court to consider a psychological report on Father submitted by Dr. Finkelstein. The report recommended possible judicial supervision of Father's treatment for substance abuse and sex addiction while Father had visitation with Jeremy. Importantly, Dr. Finkelstein couched his recommendation regarding active court

supervision as but one option for the court to consider, not as a condition necessary to ensure Jeremy's safety. Dr. Finkelstein's report did not state that Father's overnight visitation should be suspended, as Mother requested, nor did the report conclude that Father's sex addiction endangered Jeremy.

6. In April 2011, the trial court declined to modify the interim custody and visitation arrangement, and instead ordered continued joint custody with primary residential placement with Mother and regular overnight visitation with Father. In a 16-page opinion and order, the Family Court analyzed each of the eight factors of the statutory "best interests of the child" test,<sup>3</sup> and concluded that Dr. Finkelstein's report was "void [sic] of any evidence that would demonstrate that overnight visitation with Father would endanger Child." Mother's appeal followed.

7. On appeal, Mother claims that the Family Court failed to properly conduct the "best interests of the child" analysis or to adequately address Dr. Finkelstein's expert opinion. We review the trial court's denial of a motion to modify a child custody and visitation order for abuse of discretion.<sup>4</sup> To the extent

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<sup>3</sup> 13 *Del. C.* § 722.

<sup>4</sup> *Potter v. Branson*, 877 A.2d 52 (Del. 2005) (citing *Jones v. Lang*, 591 A.2d 185-87 (Del. 1991)).

an appeal implicates findings of facts, the scope of our review is limited to whether the findings are sufficiently supported by the record and are not clearly wrong.<sup>5</sup>

8. In determining whether to modify a child custody and visitation order under the “best interests of the child” standard, the trial court must consider eight factors specified by 13 *Del. C.* § 722: (i) the wishes of the child’s parent or parents as to his or her custody and residential arrangements; (ii) the wishes of the child as to his or her custodian(s) and residential arrangements; (iii) the interaction and interrelationship of the child with his or her parents, grandparents, siblings or any other residents of the household or persons who may significantly affect the child’s best interests; (iv) the child’s adjustment to his or her home, school and community; (v) the mental and physical health of all individuals involved; (vi) past and present compliance by both parents with their rights and responsibilities under Delaware’s family law; (vii) evidence of domestic violence; and (viii) the criminal history of any party or any other resident of the household.

9. Delaware law favors joint visitation absent a danger to the child.<sup>6</sup> Visitation orders should “encourage the child to have frequent and meaningful contact with both parents unless the Court finds, after a hearing, that contact of the

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<sup>5</sup> *Id.* (“We will also not substitute our own opinion for the inferences and deductions made by the Family Court where those inferences and deductions are supported by the record and are the product of an orderly and logical deductive process.”).

<sup>6</sup> 13 *De. C.* § 728.

child with 1 parent would endanger the child's physical health or significantly impair his or her emotional development.”<sup>7</sup>

10. The trial court systematically reviewed the enumerated “best interests of the child” factors and concluded as follows: (i) the parents’ wishes favored Father under the joint visitation preference expressed in 13 *Del. C.* § 728, given the lack of evidence of danger to the child; (ii) the child’s wishes were inapplicable because neither party requested Jeremy be interviewed; (iii) the Father’s relationship with Jeremy was “good” and the two had a “strong bond,” favoring Father; (iv) Jeremy had reported no adjustment issues in the seven months of visitation preceding the decision, favoring Father; (v) there was no evidence of Father’s mental health that indicated a risk of harm to Jeremy; (vi) Mother had violated “principles of joint custody” several times, favoring Father; (vii) Mother testified that Father had never physically hurt either Jeremy or Mother; although the parties acknowledged raising their voices during arguments, the court considered the domestic violence factor to favor visitation with Father; and (viii) Father’s only criminal conviction for possession of a controlled substance, although favoring Mother, occurred before the marriage and deserved “little weight.”

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<sup>7</sup> 13 *Del. C.* § 728.

11. The trial court found no evidence that Jeremy was endangered during the preceding seven months of custody. The court examined specifically whether the Father's admitted patronage of prostitutes and his alleged sex addiction either previously harmed or currently endangers Jeremy, and found no evidence to so indicate. These findings supported the trial court's order continuing Father's overnight visitation arrangement.

12. A review of the trial record supports the lower court's determination that there was no evidence to indicate endangerment of Jeremy by Father, either because of an alleged sex addiction or for any other reason. Indeed, in her testimony, Mother admitted that she did not in fact know whether sex offenders had been present on the one occasion that (she claimed) Father had taken Jeremy to an event with members of his sex addiction support group. On appeal, Mother again points to Father's sex addiction but identifies no specific facts that causally link that alleged condition to any demonstrated harm or endangerment of Jeremy.

13. Thus, none of the factors in the trial court's analysis justified the trial court modifying the custody and visitation agreement, and there was no evidence that the Father's alleged sex addiction endangered Jeremy. Mother's first claim therefore fails.

14. Mother's second claim on appeal is that the trial court failed to properly weigh the testimony of Dr. Finkelstein, who raised the possibility of judicial

supervision of Father's treatment for substance abuse and sex addiction as part of a custody and visitation arrangement. The Family Court has considerable latitude in determining what weight to give to any expert witness testimony in a "best interests of the child" analysis, and we have held it improper to consider any expert recommendation binding on that court.<sup>8</sup> In this case, the trial court was presented with an expert report analyzing the psychological makeup of the parents, not Jeremy's custody-related interests.

15. Despite appellant's claim that the trial court failed properly to analyze the expert report, the Family Court's order considered Dr. Finkelstein's psychological evaluation in its three-page discussion of the "mental and physical health of all individuals involved" factor of the "best interests of the child" analysis. The Family Court specifically determined that report to be "void [sic] of any evidence that would demonstrate that overnight visitation with Father would endanger Child." A review of Dr. Finkelstein's report supports the trial court's analysis.

16. The Family Court's conclusion that Father's alleged sex addiction did not, standing alone, justify modifying the visitation order is logical, as it is based

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<sup>8</sup> See, e.g., *Holmes v. Wooley*, 788 A.2d 131 (Del. 2002) ("While the Family Court can and should consider the recommendations of any expert offered by the parties, the ultimate decision on custody must be made independently, based solely on the best interests of the children."). See also, *Jones v. Lang*, 591 A.2d 185, 188 (Del. 1991) ("A trial court may determine the weight and credibility to be accorded the testimony of any witness, including an expert.").



on the absence of a causal link between the alleged addiction and any danger to Jeremy. The trial court also properly considered the expert report, which made no finding of endangerment of Jeremy and did not recommend the suspension of overnight visitations with Father. Because this Court will not substitute its opinion for the findings of the trial court where the court's reasoning process is orderly and logical, we affirm.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice